

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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USA BASEBALL, THE NATIONAL HIGH
SCHOOL BASEBALL COACHES ASSOCIATION,
DR. PETER BERG, JUAN HERNANDEZ, DENNIS
CANALE, MEL ZITTER, MICHAEL CRUZ, TITO
NAVARRO, JOHN TORRES, EASTON SPORTS,
INC., WILSON SPORTING GOODS CO.,
RAWLINGS SPORTING GOODS COMPANY, and
HILLERICH & BRADSBY CO.,

Plaintiffs,

-against-

THE CITY OF NEW YORK,

Defendant.

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**REPLY DECLARATION OF
JERALD HOROWITZ**

No. 07 CV 3605 (JGK) (DFE)

JERALD HOROWITZ, declares under penalty of perjury, pursuant to 28 U.S.C.
§1746, as follows:

1. I am an Assistant Corporation Counsel in the office of Michael A. Cardozo, Corporation Counsel of the City of New York, attorney for the defendant City of the New York (the "City"). I submit this reply declaration in further support of the City's motion for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure, and in opposition to plaintiffs' motion for summary judgment and a preliminary injunction.

A. Undisputed Facts

2. As more fully addressed in the City's accompanying reply memorandum of law, plaintiffs' opposition papers continue to press fatally deficient legal claims. They do not dispute that some baseball players have been either mortally or seriously injured from balls hit off a metal or metal composite ("non-wood") bat in competitive high school level baseball games. See Plaintiffs' Response to Defendant's Counter Rule 56.1 Statement of Material

Undisputed Facts (“Plaintiffs’ Rule 56.1 Response”), ¶ 32. They do not dispute that non-wood bats make use of metal alloys and advanced technology that increase performance. See Plaintiffs’ Rule 56.1 Response, ¶ 37. They do not dispute that metal bats that meet NCAA and NFHS standards have a trampoline effect that can effect performance. See Plaintiffs’ Rule 56.1 Response, ¶ 39. They do not dispute that non-wood bats that meet NCAA and NFHS standards have larger sweet spots than wood bats. See Plaintiffs’ Rule 56.1 Response, ¶ 41. They do not dispute that the weight can be distributed closer to the handle in non-wood bats than wood bats thus making the bats easier and quicker to swing. See Plaintiffs’ Rule 56.1 Response, ¶ 42. They do not dispute that non-wood bats generally have a smaller moment of inertia (“MOI”) than wood bats of comparable length and weight, and therefore can be swung faster. See Plaintiffs’ Rule 56.1 Response, ¶ 44. Nor do they dispute the advertisements of the plaintiff manufacturers who promote their non-wood bats as “war club[s].” See Plaintiffs’ Rule 56.1 Response, ¶ 49-52.

3. Plaintiffs also do not dispute that Major League Baseball’s standards include a requirement that wood composite bats must have physical properties similar to bats made from a single piece of wood, including weight, barrel diameter, length, moment of inertia, modal properties, strength and stiffness. See Plaintiffs’ Rule 56.1 Response, ¶ 70. Thus, it is not surprising that MLB Commissioner Bud Selig would send a letter confirming MLB’s support in the City’s efforts to return baseball to wood bats only. See Ex. D29 (attached hereto).

B. De Minimis Baseball Games Played Against Out-of-State Teams

4. Finally, the number of games New York City high school baseball teams play against out-of-State opponents is *de minimis*. A review was made of the spring 2007 baseball game schedules of freshman, junior varsity and varsity high school baseball teams in

New York City.¹ The review found that there were approximately 3981 scheduled games played by freshman, junior varsity and varsity high school baseball teams in New York City in the spring of 2007. Of these games, approximately 3931 were played against in-State opponents. Approximately 50 games (including spring training trips) were played against out-of-State opponents, representing 1.25% of total games played by all high school baseball teams in the spring of 2007. A table showing the teams and the number of games played against in-state and out-of-state opponents is annexed as Exhibit D30.

5. The review found that there are approximately 281 freshman, junior varsity and varsity high school baseball teams in New York City. Spring 2007 baseball game schedules were located for all but 21 of these teams.

6. A count was made of the number of games played by each team by reference to each such team's schedule. Scheduled games were counted if they took place (including pre-season games and tournament games) or if they were forfeited. Scheduled games were not counted if they were cancelled, postponed, or referenced a playoff game unless there was an indication that the school being assessed participated in such playoff game.

7. Because it could not be determined how many organized games, if any, were played by each team at a Disney-sponsored training in Florida, each such team was counted as having played 3 games in Florida. Furthermore, because it could not be determined how many games were played by the varsity teams of Dwight, Xaverian or Xavier at their respective spring

¹ Such schedules were obtained through internet searches. All schedules for such games played by public school students were obtained from the Public School Athletic League website (<http://psal.org>). Most private school schedules were obtained from each such schools' website. Other websites viewed for private school schedules included the Catholic High School Athletic Association website and a website listing high school baseball schedules (<http://highschoolsports.net>). Additionally, a list of baseball teams that participated in "Disney's Baseball Spring Training" were obtained from the 'disneyworldsports' website.


tournaments, those teams were counted as having played 4 games at such tournaments. These numbers were chosen because the only other two teams that participated in out-of-state tournaments (Horace Mann and Regis), played 3 and 4 games, respectively, at such tournaments.

8. True and correct copies of the following documents are annexed hereto for the Court's consideration, and are referenced in the City's accompanying reply memorandum of law:

- D29 Letter from Allan H. ("Bud") Selig, Commissioner of Major League Baseball, to Christine C. Quinn, Speaker of New York City Council, dated January 29, 2007 (Bates No. NYC0003580).
- D30 Table of Scheduled New York City High School Baseball Games, Spring 2007 Season

I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York
July 5, 2007



JERALD HOROWITZ (JH8395)

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